

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 INR-10 NSAE-00
PA-02 ICA-20 SP-02 SS-15 L-03 HA-05 /070 W
-----047103 250924Z /23

R 250740Z APR 78
FM USMISSION USBERLIN
TO SECSTATE WASHDC 6713
AMEMBASSY BONN
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY PARIS
AMCONSUL BREMEN
AMCONSUL DUESSELDORF
AMCONSUL FRANKFURT
AMCONSUL HAMBURG
AMCONSUL STUTTGART
USMISSION USNATO

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E O 11652: NA
TAGS: PGOV BQG AKB
SUBJ: TRIAL OF JUNE 2 MOVEMENT TERRORISTS: SECOND WEEK

REF: (A) USBERLIN 917; (B) USBERLIN 881

SUMMARY: MAJOR EVENTS OF SECOND WEEK OF TRIAL CONCERNED
ATTEMPTS OF SOME COURT APPOINTED COUNSELS TO BE DISMISSED
AND SUCCESSFUL EFFORTS OF DEFENDANTS TO BE ALLOWED
ADDITIONAL COUNSEL OF THEIR OWN CHOICE WHO WOULD BE PAID
BY THE STATE. VERY LITTLE PROGRESS WAS MADE. END SUMMARY.

1. THE THIRD SESSION OF THE TRIAL, ON APRIL 18, WAS
DOMINATED BY A DISPUTE ON THE ROLE OF THE PFLICHTVER-
TEIDIGER (COURT APPOINTED COUNSEL). IN THE COURSE OF THE
OCCASIONALLY HEATED DISPUTE, THE WAHLVERTEIDIGER (COUNSEL
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CHOSEN BY THE DEFENDANTS) REQUESTED THE "DISENGAGEMENT"
OF THOSE "FORCED COUNSELS" (AS THEY NAMED THEM) WHO HAD NOT
YET APPLIED FOR RELIEF FROM THEIR OFFICIAL APPOINTMENT.
ALTHOUGH THE MOTION FOR RELIEF OF THREE OF THE PFLICHT-
VERTEIDIGER HAD BEEN REJECTED BY THE COURT, THE THREE
(LIGNITZ, RUESSMANN AND HINGST) DID NOT ATTEND THE TRIAL
ON APRIL 18. TWO MORE PFLICHTVERTEIDIGER APPLIED FOR

RELIEF FROM APPOINTMENT AT THE THIRD SESSION. THE COURT POSTPONED DECISION AND EXPRESSED THE VIEW THAT THE ISSUE IS OF SUCH IMPORTANCE THAT IT SHOULD BE DISCUSSED IN THE MAIN TRIAL.

2. DURING THE APRIL 18 SESSION, JUDGE GEUS REVISED HIS EARLIER DECISION AND ASSIGNED A SECOND PFLICHTVERTEIDIGER TO FOUR OF THE SIX ACCUSED. HOWEVER, THESE ADDITIONAL COUNSELS WERE IN FACT SELECTED BY THE DEFENDANTS AND MAY BE REGARDED AS WAHLVERTEIDIGER WHO WILL BE PAID BY THE STATE. (SEE COMMENT BELOW IN PARA 9.)

3. FEDERAL ATTORNEY VOELZ WHEN SPEAKING ON THE FUNCTION AND SIGNIFICANCE OF THE PFLICHTVERTEIDIGER REFERRED TO ANOTHER TRIAL OF TERRORISTS AND POINTED OUT THAT THE ACCUSED BY APPLYING FOR "DISENGAGEMENT" OF THE PFLICHTVERTEIDIGER SOUGHT TO FRUSTRATE THE TRIAL AND WOULD INFLUENCE THEIR WAHLVERTEIDIGER TO PURSUE THE SAME AIM. WHEN DURING HIS SPEECH HE STATED THAT HE "THOUGHT IT NECESSARY THAT TWO FURTHER COUNSELS BE ASSIGNED WHO DO NOT COME FROM THE TERRORIST SCENE", A TUMULT BROKE OUT. VOELZ IMMEDIATELY CORRECTED HIMSELF BY STATING THAT HE HAD "MEANT COUNSELS WHO USUALLY DO NOT DEFEND TERRORISTS." THE WAHLVERTEIDIGER MOVED THAT VOELZ BE EXCLUDED FROM THE TRIAL. THEY ANNOUNCED THAT THEY WOULD APPLY TO THE FEDERAL PROSECUTOR (REBMANN) WITH THE REQUEST THAT VOELZ

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BE EXCLUDED. THEY FURTHER DEMANDED THAT THE TRIAL BE INTERRUPTED UNTIL THE FEDERAL PROSECUTOR HAD DECIDED ON THEIR MOTION. THE DEMAND WAS REJECTED BY THE COURT.

4. THE FOURTH SESSION OF THE TRIAL ON APRIL 19 DEALT ALSO ONLY WITH PROCEDURAL QUESTIONS. THE WAHLVERTEIDIGER, IN FULL AGREEMENT WITH EACH OTHER, PUT FORWARD SEVERAL MOTIONS FOR SUSPENSION OF THE TRIAL FOR THREE OR FOUR MONTHS, ARGUING THAT THE WAHLVERTEIDIGER ASSIGNED ON APRIL 18 HAD NOT HAD ENOUGH TIME TO MAKE THEMSELVES FAMILIAR WITH THE CASE. ALL MOTIONS WERE REJECTED BY THE COURT.

5. AT THE BEGINNING OF THE APRIL 19 SESSION, THE PRESIDING JUDGE REJECTED THE APPLICATIONS OF THE TWO PFLICHTVERTEIDIGER WHO ON APRIL 18 HAD REQUESTED RELIEF FROM

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THEIR APPOINTMENT. THE COURT ALSO REJECTED THE MOTION OF THE WAHLVERTEIDIGER TO "DISENGAGE" FOUR MORE PFLICHT-VERTEIDIGER. JUDGE GEUS DECLARED THAT THERE WERE NO RECOGNIZABLE REASONS FOR A "DISENGAGEMENT." GEUS EMPHASIZED THAT OWING TO THE LONG PRE-TRIAL CONFINEMENT OF THE ACCUSED, THE EXTRAORDINARY EXTENT OF THE TRIAL, THE EXPECTED LENGTH OF THE PROCEDURE AND ON THE BASIS OF EXPERIENCES MADE DURING TRIALS OF A SIMILAR NATURE, HE HAD SELECTED THE PFLICHTVERTEIDIGER HIMSELF. HE FURTHER STRESSED THAT ALL COUNSELS SELECTED HAD BEEN APPOINTED LAST NOVEMBER WITH THEIR EXPLICIT APPROVAL AND THAT THEIR ATTENTION HAD BEEN DRAWN TO THE "SPECIAL CIRCUMSTANCES OF THE PROCEDURE", IN PARTICULAR TO THE DIFFICULTIES TO BE EXPECTED WITH REGARD TO THE COOPERATION WITH THEIR CLIENTS.

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6. THE NEXT SESSION IS SCHEDULED FOR TUESDAY, APRIL 25.

7. IN A RELATED EVENT, THE ASSOCIATION OF BERLIN DEFENSE COUNSELS CRITICIZED ON 18 APRIL THE DECISION OF JUDGE GEUS NOT TO RELIEVE THOSE PFLICHTVERTEIDIGER WHO HAVE SO

REQUESTED FROM THEIR APPOINTMENT IN THE LORENZ TRIAL. THE ASSOCIATION ARGUED: QUOTE. WE ARE OF THE OPINION THAT THIS DECISION DEMONSTRATES THAT THE 1ST PENAL SENATE MISJUDGES THE TASK OF A DEFENSE COUNSEL. ONLY AN ATTORNEY WHO HAS THE CONFIDENCE OF THE ACCUSED WILL BE ABLE TO DEFEND HIM. FOR THE BERLIN ASSOCIATION THE PROBLEM, AT THE PRESENT STAGE OF THE PROCEDURE, IS NOT THE FACT THAT THE PFLICHTVERTEIDIGER HAD BEEN HIT BY THE ACCUSED, ALTHOUGH THE ASSOCIATION DISAPPROVES OF THIS, BUT RATHER THE FACT THAT THESE COUNSELS DECLARED THEIR READINESS TO BE ASSIGNED AS COUNSELS OF THE ACCUSED AGAINST THE LATTERS' WILL. THE ASSOCIATION IS REQUESTING ALL PFLICHTVERTEIDIGER WHO HAVE BEEN ASSIGNED AGAINST THE WILL OF THE ACCUSED TO APPLY TO THE COURT FOR RELIEF OF THEIR APPOINTMENT AND, IF THE COURT SHOULD AGAIN REJECT THE APPLICATION, TO LEAVE THE PROCEDURE WITHOUT THE APPROVAL OF THE COURT. END QUOTE.

8. THIS MAY EXPLAIN THE ABSENCE OF THREE PFLICHTVERTEIDIGER AT LAST WEEK'S SESSIONS.

9. FYI. THE FOLLOWING INFORMATION IS PROVIDED IN ORDER TO FACILITATE ADDRESSEES' UNDERSTANDING OF CURRENT PROCEDURAL WRANGLE:
ACCORDING TO ARTICLE 140 OF THE LAW ON CRIMINAL PROCEDURE, THE PARTICIPATION OF DEFENSE COUNSEL IS MANDATORY IF:
1) THE MAIN TRIAL AT FIRST INSTANCE TAKES PLACE BEFORE THE HIGH STATE COURT (IN BERLIN THE KAMMERGERICHT) OR 2) AN UNCLASSIFIED

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ACT IS INVOLVED WHICH IS A MAJOR CRIME. IF THE ACCUSED DOES NOT HAVE A DEFENSE COUNSEL OF HIS OWN CHOICE (WAHLVERTEIDIGER), THE PRESIDING JUDGE APPOINTS A DEFENSE COUNSEL FOR HIM (PFLICHTVERTEIDIGER).
IT IS COMMON PRACTICE IN BERLIN AND ELSEWHERE IN GERMANY THAT, IF THE ACCUSED CANNOT AFFORD A DEFENSE COUNSEL OF HIS CHOICE BUT HAS A CERTAIN PREFERENCE FOR A PARTICULAR DEFENSE COUNSEL AND THIS DEFENSE COUNSEL INDICATES THAT HE WOULD TAKE OVER THE DEFENSE, THE PRESIDING JUDGE WILL APPOINT THIS PARTICULAR LAWYER. ACCORDINGLY IN THE LORENZ TRIAL (ACCORDING TO AN "ABEND" REPORT) SOME TIME BEFORE THE TRIAL THE COURT APPROACHED THE BERLIN BAR ASSOCIATION WITH A REQUEST TO PROVIDE THE COURT WITH A LIST OF VOLUNTEERS READY TO PARTICIPATE IN THE TRIAL AS COURT APPOINTED DEFENSE COUNSELS (PFLICHTVERTEIDIGER). THE BAR ASSOCIATION SUBMITTED A LIST OF 30 NAMES FROM WHICH THE COURT SELECTED THE DEFENSE COUNSELS. GEORGE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRIALS, TERRORISTS, COURT PROCEEDINGS, PROGRESS REPORTS
Control Number: n/a
Copy: SINGLE
Draft Date: 25 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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From: USBERLIN
Handling Restrictions: n/a
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Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 USBERLIN 917, 78 USBERLIN 881
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2850568
Secure: OPEN
Status: NATIVE
Subject: TRIAL OF JUNE 2 MOVEMENT TERRORISTS: SECOND WEEK
TAGS: PGOV, BQG, AKB, 2 JUNE MOVEMENT
To: STATE BONN
Type: TE
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Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014